



## HIBOB CUSTOMER SUBSCRIPTION TERMS & CONDITIONS

Last Revised: April 2021

THESE CUSTOMER SUBSCRIPTION TERMS AND CONDITIONS (“**AGREEMENT**”) ENTERED INTO BY AND BETWEEN THE HIBOB LEGAL ENTITY SIGNING AN ORDER FORM AND ITS AFFILIATES (COLLECTIVELY, “**HIBOB**”, “**COMPANY**”, “**WE**” OR “**US**”) AND THE INDIVIDUAL OR LEGAL ENTITY USING OR LICENSING THE SERVICES UNDER THIS AGREEMENT AND/OR UNDER AN APPLICABLE ORDER FORM (“**CUSTOMER**” OR “**YOU**” AND TOGETHER WITH HIBOB, THE “**PARTIES**”) GOVERNS CUSTOMER’S ACCESS AND USE OF THE SERVICES. FOR AVOIDANCE OF DOUBT, THE TERM “CUSTOMER” OR “YOU” SHALL ALSO INCLUDE EMPLOYEES OR OTHER INDIVIDUALS USING THE SERVICES.

BY ACCEPTING THIS AGREEMENT WHILE EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “CUSTOMER” “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND SHALL NOT BE PERMITTED TO USE THE SERVICES.

PLEASE NOTE THAT THIS AGREEMENT IS SOLELY FOR PAYING CUSTOMERS AND DOES NOT APPLY FOR VISITORS OF THE SITE OR USERS OF THE FREE DEMO AVAILABLE ON THE SITE.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE DO NOT CONNECT, ACCESS OR USE THE SERVICES IN ANY MANNER. ANY SOFTWARE PROVIDED IN CONNECTION WITH THE SERVICES, IS BEING LICENSED AND NOT SOLD TO YOU.

BY ACCEPTING THIS TERMS OF THIS AGREEMENT YOU REPRESENT AND WARRANT THAT ANY AND ALL INFORMATION YOU PROVIDE US THROUGH THE SERVICES IS TRUE, ACCURATE AND COMPLETE. THE PROVISION OF FALSE OR FRAUDULENT INFORMATION IS STRICTLY PROHIBITED.

YOU MUST BE OVER THE AGE OF SIXTEEN (16) TO BE ABLE TO USE THE SERVICE. WE RESERVE THE RIGHT TO REQUEST PROOF OF AGE AT ANY STAGE SO THAT WE CAN VERIFY THAT MINORS UNDER THE AGE OF SIXTEEN (16) ARE NOT USING THE SERVICE. IN THE EVENT THAT IT COMES TO OUR KNOWLEDGE THAT A PERSON UNDER THE AGE OF SIXTEEN (16) IS USING THE SERVICE, WE WILL PROHIBIT AND BLOCK SUCH USER FROM ACCESSING THE SERVICE AND WILL MAKE ALL EFFORTS TO PROMPTLY DELETE ANY DATA WITH REGARD TO SUCH USER.

HiBob has developed and owns a cloud-based SaaS platform that enables entities to manage their human resources and employee benefits. This Agreement is effective between Customer and HiBob as of the date of Customer’s accepting this Agreement (the “**Effective Date**”), which shall govern the subscription, access to, and use of the Services (as further defined below).

PLEASE NOTE: HIBOB IS NOT A LICENSED FINANCIAL PLANNER, RETIREMENT PLAN FIDUCIARY, REGISTERED REPRESENTATIVE, BROKER, DEALER OR TAX ADVISOR, NOR DOES IT REPRESENT ITSELF AS SUCH. THE SERVICE DOES NOT PROVIDE LEGAL, TAX OR FINANCIAL ADVICE AND SHOULD NOT BE USED AS YOUR SOURCE FOR MAKING ANY SUCH



DECISIONS. WE STRONGLY RECOMMEND MAKING ALL YOUR FINANCIAL DECISIONS ON THE BASIS OF PROFESSIONAL AND AUTHORIZED ADVICE.

1. **General.** Customer will subscribe to the Services by executing an order form which shall define: (i) the subscription term; (ii) applicable HiBob modules to which Customer subscribes; (iii) the consideration to be paid by Customer; (iv) minimum number of Authorized Users (as defined below); and (v) any other subscription terms that may be agreed upon by the Parties ("**Order Form(s)**").

Upon expiration of an applicable subscription period, the applicable Order Form may be renewed and/or replaced by a new Order Form subject to the terms defined therein. HiBob's services as specified and defined in an applicable Order Form shall be referred to as the "**Service(s)**". Each Order Form executed by the Parties is governed by this Agreement and is subject thereto. In any event of a conflict or inconsistency between the terms herein and the terms of the Order Form, the terms of the Order Form shall prevail.

## 2. **Right to Use the Services**

2.1. Right to Use the Services. Subject to compliance with terms and conditions of this Agreement and of an applicable Order Form then in force and full payment of the applicable Fees (as defined below), HiBob grants to Customer a non-exclusive, non-transferable, non-sub-licensable, limited right to access and use the Services for internal business purposes during the subscription term, and in accordance with the usage terms set forth herein and in the applicable Order Form. All rights in the Services not expressly granted hereunder are reserved to HiBob (or its licensors).

2.2. Authorized Users. For the purpose of this Agreement, "**Authorized User(s)**" means individual(s) for whom: (i) have access to and use of the Services, and/or (ii) Customer is actively processing such personnel information through the Service, including Customer's employees and authorized agents. Use of the Services by an Authorized User requires that an Authorized User be assigned with an account ("**Authorized User Account**") by its company administrator. For clarity's sake, inactive Authorized User accounts (e.g. terminated personnel) shall not be considered for payment purposes.

With respect to the Authorized Users, Customer undertakes that: (i) it will not allow any user subscription to be used by more than one individual Authorized User unless it has been reassigned in its entirety to another individual Authorized User, in which case the prior Authorized User shall no longer have any right to access or use the Services; (ii) each Authorized User shall keep a secure password for his or her use of the Services; and (iii) it shall not knowingly allow Authorized User to breach any terms of use or service and Privacy Policy, each as updated by HiBob from time to time, provided such updated terms and policy are shown to the Authorized User through the Platform.

2.3. Usage Restrictions. Other than the rights expressly specified in this Agreement and in an applicable Order Form, no other right or interest whatsoever is granted to Customer in connection with the Services or to the solutions to which it provides access. Without limiting the foregoing, Customer may not: (i) use the Services for purposes other than the purposes for which it is intended as defined in this Agreement and/or the applicable Order Form; (ii) rent, lease, lend, sell, sublicense, assign, distribute, or transfer in whole or in part the right to use the Services or any part thereof; (iii) bypass or breach any security device or protection used by the Services; (iv) input, upload, transmit, or otherwise provide to or through the Services any information or materials that are unlawful or injurious, or that contain, transmit, or activate any harmful code; (v) use the Services in any illegal manner or in any way that infringes the right of any third party; (vi) modify, adapt, edit, alter, abridge, translate, or otherwise change in any manner the content of the Services, nor shall Customer create derivative works from the Services; (vii) systematically collect any data from the Service (by scraping or otherwise) unless allowed in the Service or by Hi Bob in writing; (viii) attempt to discover or gain access to the source code for the software underlying the Services or reverse engineer, decode, modify, decrypt, extract, disassemble or decompile such software (including in order to (1) build a competitive product or service; (2) build a product using similar ideas, features, functions or graphics of the Services; or (3) copy any ideas, features, functions or graphics of the Services; (ix) employ any hardware, software, device or technique to pool connections or reduce the number of devices or users that directly access or use the Services (sometimes referred to as 'virtualisation', 'multiplexing' or



'pooling') in order to circumvent any restrictions on scope of Authorized use contained in this agreement; (x) obscure, amend or remove any copyright notice, trademark or other proprietary marking on, or visible during the operation or use of, the Services or underlying software; (viii) attempt to gain unauthorized access to or interfere with the proper working of the Services or the underlying software and, in particular, must not attempt to circumvent security, licence control or other protection mechanisms, or tamper with, hack into or otherwise disrupt the Services or software or any associated website, computer system, server, router or any other internet-connected device; (xi) provide false identity information to gain access to or use the Services; (xii) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Customer Data transmitted through the Services; or (xiv) use the Services to: (1) upload, store, post, transmit, distribute, link to or otherwise make available, or advertise or promote any content that infringes any Intellectual Property Rights or data protection, privacy or other rights of any other person, is defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, abusive, harassing, inciteful of violence or hatred, blasphemous, discriminatory (on any ground), liable to cause anxiety, alarm or embarrassment, knowingly false or misleading, or that does not comply with all applicable laws and regulations or is otherwise objectionable or prohibited as set out in any acceptable use policy published online through the Services, as updated by HiBob from time to time ("**Prohibited Content**"); (2) impersonate any person or entity or otherwise misrepresent the Customer's relationship with any person or entity; (3) engage in any fraudulent activity or further any fraudulent purpose; (4) provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organisation(s) designated by the government of the United States or any foreign government as a foreign terrorist organisation; (5) "stalk" or otherwise harass another person or collect or store unauthorized personal data in relation to any individual; (6) transmit or distribute any unsolicited or unauthorized advertising, marketing or promotional material or other form of solicitation (spam); (7) transmit or distribute any virus and/or other code that has contaminating or destructive elements; and/or (8) otherwise engage in any unlawful activity; (9) attempt to override or circumvent any of the usage rules embedded into the Services. Any unauthorized reproduction, publication, further distribution or public exhibition of the HiBob content, in whole or in part, is strictly prohibited.

2.4. Authorized Users' Consent. Customer will be solely responsible to obtain the authorizations, licenses and consents, if and as required by any applicable law, to make the Services available to the Authorized Users.

### 3. **Customer Content and Rights to Use Customer Content**

3.1. When you provide any Personal Information and Non-Personal Information (as such terms are defined in HiBob Privacy Policy (available at: <https://www.hibob.com/privacy-policy/>) ("**Privacy Policy**"), including data, information and material input or uploaded to the Services or transmitted through the Services by the Customer or any Authorized User to HiBob ("**Customer Data**") and/or any other material provided or made available by or on behalf of the Customer to HiBob for the purposes of incorporation into the Services for the Customer or other permitted use by HiBob, but excluding Customer Data ("**Customer Materials**"), you (whether you are an organization user or the company administrator operating on behalf of the organization or an Authorized User) represent and warrant that you have full authority to provide us with such Customer Data and Customer Materials.

3.2. HiBob allows you (the organization and/or the Authorized User) to upload, post, publish and make available copyrightable materials such as literary works, text, images, photos, videos, strips and any other proprietary materials, which may include Customer Data and/or Customer Materials (the "**Customer Content**"). Such Customer Content shall remain at all times, and to the extent permitted by law, the respective property of its third-party owner. You understand and agree that you are solely responsible for your Customer Content and the consequences of posting or publishing such material, through the Services, in any way.

3.3. You represent and warrant that you are the rightful owner of the Customer Content you upload, or, that you have (and will continue to have) all the necessary licenses, rights, consents, and permissions from the rightful owners of such Customer Content, which are required to use and to enable HiBob to use the Customer Content you upload and that such Customer Content does not infringe any third party's copyright or other rights.



#### 4. **Third Party Services; Third Party Components**

4.1. The Services may be linked to certain third-party websites and other third-party services (collectively, "**Third Party Services**"). Such Third Party Services are independent from the Services. You hereby acknowledge that HiBob has no control over such Third Party Services, and further acknowledge and agree that HiBob is not responsible for the availability of Third Party Services, and does not have responsibility or liability for any goods, services, content, advertisements, products, or any materials available on and/or through such Third Party Services.

4.2. You further acknowledge and agree that HiBob shall not be responsible or liable, directly or indirectly, for any damage or loss whatsoever caused, or alleged to be caused, by or in connection with use of or reliance on any goods, services, content, products or other materials available on or through any Third Party Services. Most Third Party Services provide legal documents, including terms of use and privacy policy, governing the use of each such Third Party Services, their contents and services. We encourage you to read these legal documents carefully before using any such Third Party Services.

4.3. The Services may use or include third party software, files and components that are subject to open source and third-party license terms ("**Third Party Components**"). Your right to use such Third Party Components as part of, or in connection with, the Services is subject to any applicable acknowledgements and license terms accompanying such Third Party Components, contained therein or related thereto. If there is a conflict between the licensing terms of such Third Party Components and these Terms, the licensing terms of the Third Party Components shall prevail only in connection with the related Third Party Components. These Terms do not apply to any Third Party Components accompanying or contained in the Services and HiBob disclaims all liability related thereto. You acknowledge that HiBob is not the author, owner or licensor of any Third Party Components, and that HiBob makes no warranties or representations, express or implied, as to the quality, capabilities, operations, performance or suitability of Third Party Components. Under no circumstances shall the Services or any portion thereof (except for the Third Party Components contained therein) be deemed to be "open source" or "publicly available" software.

#### 5. **Consideration; Taxes**

5.1. Consideration. In consideration for the Services and rights granted herein, commencing on the Effective Date, Customer shall regularly pay HiBob during the initial subscription term, the fees listed in the applicable Order Form ("**Fees**"). All Fees shall be payable in advance, based on the Services and the number of Authorized Users identified in the applicable Order Form. Fees are subject to change upon subscription renewal. Fees are non-refundable and payment obligations are non-cancellable. Notwithstanding the aforementioned, in an event of termination for cause according to Section 12.2. below, due to a material breach by HiBob, the foregoing shall not apply to amounts paid for the Services in advance, but which are unused on the date of termination (calculated on a pro-rata basis of the balance period between the termination date and the original term of the applicable Order Form), which may be refundable.

5.2. Minimum Authorized Users. Customer must pay the Fees equal to the minimum number of Authorized Users as set forth in the applicable Order Form for the subscription term ("**Minimum Subscription**"). In the event that the Customer requires additional Authorized User subscriptions beyond the Minimum Subscription during the subscription term then: (i) for a Customer under a *monthly payment plan*: Customer shall pay for the actual number of Authorized Users for the given month; (ii) for a Customer under an *annual payment plan*: Customer shall make a payment for the difference between the original Minimum Subscription Fees paid and the updated Minimum Subscription (based on the additional Authorized Users in such month) for the remainder of the subscription term. For the removal of doubt, Customer must in any event pay no less than the Minimum Subscription Fees regardless if the Authorized User count goes below the Minimum Subscription during the subscription term.

5.3. Invoicing. Customer is responsible for providing complete and accurate billing and contact information to HiBob and such other information required by the Order Form.



5.4. **Taxes.** HiBob's fees are exclusive of any taxes, levies, duties or similar governmental assessments of any nature, other charges, domestic or foreign imposed by any federal, state, or local tax authority with respect thereto including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If HiBob has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section 5, HiBob will invoice Customer and Customer will pay that amount unless Customer provides HiBob with a valid tax exemption certificate authorized by the appropriate taxing authority. To the extent Customer is required by law to withhold income-based taxes based upon the fees hereunder, Customer will deduct such tax from the fees payable to HiBob and remit them to the appropriate government authorities; provided that Customer sends HiBob a receipt showing the payment of such Taxes, and provides HiBob with reasonable support and with sufficient evidence to enable HiBob to obtain any credits available to it. For clarity, HiBob is solely responsible for Taxes assessable against it based on its income, property and employees.

5.5. **Late Payments.** If HiBob has not received payment within the due date set forth in the Order Form, and without prejudice to any other rights and remedies of HiBob under this Agreement or law, HiBob may, without liability to the Customer: (i) suspend access, including by disabling the Customer's password and account, to all or part of the Services and HiBob shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and (ii) charge interest from the day on which the Fees are due at a rate of 1.5 per cent per month, but in no event higher than the maximum legal rate permissible under applicable law.

## 6. **Privacy and Data Protection**

6.1. **Collection and Processing of Data; Security.** For the purpose of providing the Services, the ongoing operation thereof, and/or for security purposes, HiBob collects, processes and stores certain data. HiBob respects your privacy and is committed to protecting the information you share with us. HiBob believes that you have a right to know our practices regarding the information HiBob collects when you connect to, access or use the Services. Our policy and practices and the type of information collected are further described in our Privacy Policy, which is hereby incorporated by reference to this Agreement.

The Parties shall comply with all applicable laws and regulations pertaining to data security and privacy and shall collect data only in a lawful manner. HiBob shall use reasonable measures to protect Customer Data, which shall however be at least compliant with ISO 27001:2013 and Soc2. Customer warrants that such data shall have been obtained and shall be provided or made available to HiBob in compliance with all applicable laws and regulations, including by obtaining all necessary consents (as applicable) from data subjects whose data is provided or made available giving consent, as may be necessary to permit HiBob to provide the Service and perform its obligations as contemplated by this Agreement.

HiBob shall: (i) process the "**Personal Data**" (as defined under applicable law) only in accordance with Customer's documented reasonable instructions and on its behalf, and in accordance with the Agreement and the Data Processing Addendum (as applicable and defined below); (ii) ensure persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality and train such personnel to be aware of their responsibilities under applicable laws and this Agreement; (iii) assist Customer, at Customer's expense, as needed to cooperate with and respond to requests from supervisor authorities, data subjects, customers, or others to provide information related to Hi Bob's Processing of Personal Data; (iv) notify the Customer without undue delay after becoming aware of a security breach incident related to Customer's and its Authorized Users' Person Data; (v) only process or use Personal Data on its systems or facilities to the extent necessary to perform its obligations under the Agreement and the Privacy Policy; (vi) not lease, sell or otherwise distribute Personal Data other than as part of the Service agreed between the Parties (excluding in case of assignment of this Agreement under its terms and if legally required); (vii) purchase and maintain throughout the term of the Agreement or the term in which it retains the Personal Data, professional liability insurance customary to cover liabilities related to cyber security; (viii) maintain the Personal Data separately from any other data it



holds for its other clients and/or third parties. (ix) appoint a designated contact person who will be responsible for any cooperation with the Customer with respect to the processing of Personal Data (x) report to the Customer at its request in writing regarding security and obligations related to data processing and (xi) allow Customer to have, subject to appropriate non-disclosure agreements between the audit performing personnel and Hi bob and upon reasonable prior notice, required information regarding the processing of data under this Agreement.

In case Customer processes through the Platform information of any EU citizens, the Parties may execute a separate Data Processing Addendum governing such process.

6.2. Customer's Undertakings. Customer shall be solely responsible for obtaining all consents and authorizations as may be required by any applicable law, for the collection, storage and processing of information and/or sensitive information by HiBob according to Customer's instructions.

6.3. Changes in the Privacy Policy. HiBob shall notify Customer (via the Services or by written notice) of material changes in the Privacy Policy, within the timeframe set in the Privacy Policy and as further detailed therein ("**Privacy Policy Notice**"). In the event the changes in the Privacy Policy adversely or unlawfully changes the material rights of the Authorized Users, Customer will have the right to reasonably object to such change and if such objection is not accepted by HiBob, Customer may terminate this Agreement by providing a written notice within thirty (30) days following delivery of Privacy Policy Notice.

## 7. **Proprietary Rights**

7.1. HiBob's Rights. HiBob owns and shall retain all right, title, and interest, including Intellectual Property Rights (as defined below), in and to the Services and the solutions provided thereby, and all the underlying software and technology, all as may be updated, improved, modified or enhanced from time to time; and further – in and to the brand names, logos and trademarks related to the foregoing.

For the purpose of this Agreement, "**Intellectual Property Rights**" means any and all intellectual property rights, whether registered or not, worldwide including, without limitation, all the following: (i) copyrights, including moral rights, registrations and applications for registration thereof; (ii) computer software programs, data and documentation; (iii) patents, patent applications and all related continuations, divisional, reissue, design patents, applications and registrations thereof, certificates of inventions; and (iv) trademarks, trademark applications, domain names, trade secrets and Confidential Information (as defined below).

7.2. Customer's Ownership. Customer owns and shall retain all right, title, and interest in and to the Customer Content. Customer Content specifically excludes content provided by HiBob which does not use Customer Content, such as HiBob's Confidential Information and Intellectual Property.

7.3. Customer hereby grants to HiBob a worldwide, non-exclusive, non-transferable and non-sublicensable (except in connection with the permitted assignment of this Agreement and/or to HiBob's sub-processors), and royalty-free license to use the Customer Content solely for the purpose of providing the Services to Customer pursuant to this Agreement and the applicable Order Form.

7.4. Customer acknowledges that in order to provide and/or further improve the Services, HiBob may transform Customer Data to anonymized, aggregated information ("**Anonymized Data**"). All Anonymized Data shall not be considered as Customer Content to the extent such data cannot reasonably be de-anonymized, and HiBob may freely use such Anonymized Data, provide that HiBob shall not use Anonymized Data in a manner that links any individual or the Customer to such Anonymized Data without Customer's prior written approval.

7.5. Feedback. HiBob may, at its discretion and for any purpose, freely use, modify, and incorporate into its Services any feedback, comments, or suggestions provided by Customer or Authorized Users (other than Customer Content), if any, without any additional obligation of HiBob to Customer or the applicable Authorized Users.



## 8. **Warranty**

8.1. **Representations.** HiBob represents and warrants to Customer that (i) during the term of each applicable Order Form, the Services will substantially conform to the specifications as set forth in such Order Form; and (ii) any support or implementation services performed by or on behalf of HiBob under this Agreement, if any, will be performed in a professional and workmanlike manner and by personnel that has the necessary skills, training and background to perform such services.

8.2. **Exclusive Warranty.** THE WARRANTIES CONTAINED IN THIS SECTION 8 ARE EXCLUSIVE, AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR ARISING BY A COURSE OF DEALING OR USAGE OF TRADE. HIBOB DOES NOT CONTROL THE CONTENT POSTED TO OR VIA THE SERVICES AND, IN PARTICULAR, DOES NOT CONTROL THE CUSTOMER CONTENT AND, AS SUCH, HIBOB DOES NOT MAKE OR GIVE ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY, COMPLETENESS, CURRENCY, CORRECTNESS, RELIABILITY, INTEGRITY, USEFULNESS, QUALITY, FITNESS FOR PURPOSE OR ORIGINALITY OF ANY OF THE FOREGOING CONTENT OR DATA.

CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICE(S) AND ANY HIBOB CONTENT, AND ANY ACCOMPANYING DOCUMENTATION ARE PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS. IN PARTICULAR, HIBOB DOES NOT WARRANT THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED, CONTAMINANT-FREE OR ERROR-FREE, THAT SYSTEM AVAILABILITY BE MAINTAINED, THAT ANY ERROR, BUG OR PROBLEM BE RESOLVED OR THAT THEY WILL MEET THE CUSTOMER'S REQUIREMENTS.

THIS SECTION DOES NOT LIMIT, AND IS WITHOUT PREJUDICE TO, THE PROVISIONS OF SECTION 11 BELOW.

## 9. **Indemnification by HiBob**

9.1. **Indemnification Obligation.** HiBob will defend Customer from and against any claim by a third party against Customer to the extent the claim is based on an allegation that the Services provided by HiBob infringes upon, or misappropriates, any Intellectual Property Rights of a third party ("**Infringement Claim**"), and shall indemnify Customer against all liabilities, damages, costs (including settlement costs and reasonable attorneys' fees) finally awarded by a competent court, arbitrator/s, or in a settlement, as a result of such claim by a third party; provided that (i) Customer has notified HiBob promptly in writing of such claim; (ii) Customer has provided HiBob with the authority to control and handle the claim including the defense and settlement of such claim; and (iii) Customer provides to HiBob all information and assistance (at HiBob's expense) as may be required for that purpose.

9.2. **Exclusions.** In no event will HiBob have any obligation or liability under this Section 9 arising from: (i) use of any Services in a modified form or in combination with materials not furnished by HiBob; (ii) any Customer Content; (iii) any failure by Customer to comply with Customer's responsibilities under this Agreement; and (iv) use by HiBob of any equipment provided by Customer and per Customer's instructions, for the provision of any support or implementation services.

9.3. **Remedial Actions.** In the event that the Services or any part thereof is likely to, in HiBob's sole opinion, or does become the subject of an Infringement Claim, HiBob may, at its option and expense: (i) procure for Customer the right to continue using the Services (including the allegedly infringing portion/item); (ii) substitute a functionally equivalent non-infringing replacement for such allegedly infringing portion of the Services or otherwise modify it to make it non-infringing and functionally equivalent; or (iii) terminate the Agreement and any outstanding Order Form and refund to Customer fees paid to HiBob for the infringing items in an amount prorated to reflect the period of time between the date Customer was unable to use the Services due to such Infringement Claim and the remaining days in the current subscription term.

9.4. **Sole Remedy.** Without derogating from the provisions of Section 11 below, this Section 9 sets forth the exclusive and entire remedy of Customer with respect to any Infringement Claims.



## 10. Customer's Responsibilities

10.1. In addition to any other undertaking or responsibility of Customer as set forth in this Agreement, any applicable Order Form or an exhibit hereto or thereto, Customer shall be solely responsible and liable for, and in connection with: (i) the manner in which Customer and the Authorized Users use the Services (ii) Customer Content, including without limitation Customer's rights to use such Customer Content in connection with the Services; (iii) information, data or other Customer Content provided by Authorized Users; and/or (iv) compliance by Customer with any and all applicable laws and with third parties' rights in connection with the foregoing.

10.2. You hereby agree to defend, indemnify and hold harmless HiBob from and against any and all claims, damages, obligations (including, but not limited to reasonable legal fees) arising from any of the aforementioned responsibilities of the Customer.

YOU AGREE THAT HIBOB'S SERVICE PROVIDERS ARE A THIRD-PARTY BENEFICIARY OF THE ABOVE PROVISIONS, WITH ALL RIGHTS TO ENFORCE SUCH PROVISIONS AS IF SERVICE PROVIDER WERE A PARTY TO THIS AGREEMENT.

## 11. Limitation of Liability

11.1. Limitation on Indirect Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL HIBOB BE LIABLE UNDER THIS AGREEMENT FOR (i) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (ii) FOR LOSS OF USE, BUSINESS, REVENUES, DATA, GOODWILL, PROFITS OR SIMILAR LOSSES; IN EACH CASE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11.2. Limitation on Amount of Liability. TO THE FULLEST EXTENT PERMITTED BY LAW, AND OTHER THAN IN THE EVENT OF WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, BREACH OF ITS CONFIDENTIALITY OBLIGATIONS OR ITS INDEMNIFICATION OBLIGATIONS, OR AS SET FORTH BELOW IN THIS SECTION 11.2, HIBOB'S AGGREGATE LIABILITY UNDER EACH ORDER FORM SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER FOR THE APPLICABLE ORDER FORM, AND HIBOB'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY ("**LIABILITY CAP**").

11.3. WE WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY FAILURE TO PERFORM, OR DELAY IN PERFORMANCE OF, ANY OF OUR OBLIGATIONS UNDER THESE TERMS THAT IS CAUSED BY EVENTS OUTSIDE OUR REASONABLE CONTROL.

## 12. Term, Termination and Suspension of Services

12.1. Term. This Agreement commences on the Effective Date and will remain in effect for so long as Customer has an applicable subscription term in effect, unless otherwise terminated in accordance with the provisions herein.

12.2. Renewal. Subject to applicable law, the initial term and subsequent additional term(s) shall be automatically renewed, provided that HiBob gives a written notice of such renewal to the Customer at least forty-five (45) days prior to the effective renewal date, and further provided the Customer does not provide, not later than thirty (30) days prior to the effective renewal date, counter written notice that it does not wish the renew the initial term or additional term (as applicable).

12.3. Termination. Either HiBob or Customer may terminate this Agreement and any Order Form thereunder, if: (i) the other Party is in material breach of the Agreement and fails to cure that breach within thirty (30) days after receipt of written notice; or (ii) the other Party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety (90) days.

12.4. Effects of Termination. In any event of termination of this Agreement by either Party:



- 12.4.1. All rights granted hereunder shall immediately expire and any and all use and/or exploitation by Customer and/or on its behalf of the Services, and any part thereof, shall immediately cease and expire;
- 12.4.2. All pending amounts owed to HiBob by the Customer shall become immediately due and payable;
- 12.4.3. HiBob shall in accordance with its Privacy Policy, delete data held about the Customer and any Authorized User and HiBob shall, at the written request of the Customer, within fourteen (14) days from termination, allow the Customer to download a copy of all information held by HiBob in respect of its Authorized Users;
- 12.4.4. Each Party shall return or destroy, at other Party's option all copies of Confidential Information received from such other Party, pursuant to Section 13 below;
- 12.4.5. any accrued rights or liabilities which either party may have by the effective termination date shall remain unaffected; and
- 12.4.6. Provisions contained in this Agreement that are expressed or by their sense and context are intended to survive the termination of this Agreement shall so survive the termination, including without limitation Section 5 (Consideration due for the period prior to termination), Section 6 (Privacy, with respect to the period prior to termination) and Sections 7 through 13 (inclusive).

12.5. Suspension of Services. HiBob reserves the right to monitor the use of the Services for security and operational purposes. HiBob may suspend or otherwise deny Customer's or any other person's access to or use of all or any part of the Services for security reasons if HiBob believes, in its reasonable discretion, that any third party has gained unauthorized access to any portion of the Services using any credential issued by HiBob to Customer or its Authorized Users.

### 13. Confidentiality

13.1. For the purpose of this Agreement, "**Confidential Information**" means any non-public information disclosed by a Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"), that is designated in writing as confidential or if disclosed orally – is reduced to writing and titled as "confidential" within thirty (30) days following the disclosure and sharing with the Receiving Party. Confidential Information shall include, but is not limited to, technological information such as know-how, software, data, programs, inventions, ideas, processes, formulas, developments, designs, materials, business information such as marketing and selling, budgets, prices and costs, information about the Disclosing Party's employees, affiliates, suppliers and customers, and trade secrets. Confidential Information does not include information that is: (i) public knowledge at the time of disclosure or thereafter becomes generally known other than through an act of breach or negligence by the Receiving Party; (ii) already known by the Receiving Party prior to its receipt from the Disclosing Party; (iii) independently developed at any time by the Receiving Party without use of or reference to Confidential Information; (iv) rightfully obtained by the Receiving Party from other unrestricted sources.

13.2. Protection of Confidential Information. All Confidential Information delivered, made available or otherwise acquired pursuant to this Agreement shall (i) not be copied, distributed, disseminated or made available in any way or form by Receiving Party without the prior written consent of the Disclosing Party; (ii) be maintained in strict confidence using the same degree of care that the Receiving Party takes to protect its own confidential information, but in no event less than reasonable care; (iii) may only be disclosed to those employees, contractors and/or service providers of Receiving Party who have a need to know in connection with purposes consistent with this Agreement, and who are bound by a written obligation of confidentiality no less restrictive as those set forth herein; and (iv) shall not be used by Receiving Party for any purpose, except for the purposes of this Agreement, without the prior written consent of the Disclosing Party. For the avoidance of doubt, Confidential Information including personal information collected through the use of the Services shall be used, collected, retained, processed and deleted in accordance with the provisions of Section 6 above.

13.3. Compelled Disclosure. If the Receiving Party is compelled by law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall (i) promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement so that the Disclosing Party can seek a protective order; and (ii) provide reasonable assistance to the Disclosing



Party, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

13.4. Expiration. The provisions of this Section 13 shall survive the natural expiration or termination of this Agreement for any reason for a period of three (3) years or for seven (7) years following their disclosure, whichever is earlier.

**14. Miscellaneous.**

14.1. Entire Agreement. This Agreement, including all exhibits hereto and all applicable Order Forms, constitute the entire agreement between Customer and HiBob with respect to the subject matter of this Agreement and supersede and replace any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement, including previous non-disclosure agreements between the Parties.

14.2. Assignment; Change of Control. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other Party's prior written consent, not to be unreasonably withheld; such consent shall not, however, be required, in connection with an assignment to a successor in interest in connection with any merger, consolidation, reorganization or restructuring, or the sale of substantially all of a Party's assets.

14.3. Governing Law and Jurisdiction. The law that will apply in any dispute or lawsuit arising out of or in connection with this Agreement, including its exhibits and the Order Forms, the courts that have jurisdiction over any such dispute or lawsuit, depend on the HiBob entity entering into this Agreement as detailed below.

<b>HiBob Entity</b>	<b>Governing Law is:</b>	<b>Courts with exclusive jurisdiction are:</b>
Hi Bob, Inc.	New York	New York, New York
Hi Bob Ltd.	Israel	Tel Aviv, Israel
Hi Bob (UK) Limited	England	London, England
Hi Bob (NL) B.V.	Netherlands	Amsterdam, Netherlands

14.4. Export Restrictions. The Services and other technology HiBob makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list. Customer shall not permit Users to access or use any of the Services in a U.S. embargoed country or in violation of any U.S. export law or regulation.

14.5. Other Provisions. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect. Any notice required or permitted to be given by either Party under this Agreement shall be in writing and may be delivered by courier, sent by registered letter, and shall be effective upon receipt or, if sent by email, upon proof of being sent. Any notice to either Party shall be sent to the contact information listed in the applicable Order Form. A copy of notices to HiBob shall also be sent to [legal@hibob.com](mailto:legal@hibob.com).

14.6. No failure or delay by any Party at any time to enforce one or more of the terms, conditions or obligations of this Agreement will (i) constitute waiver of such term, condition or obligation; (ii) preclude such Party from requiring performance by the other Party at any later time; or (iii) be deemed to be a waiver of any other subsequent term, condition or obligation, whether of like or different nature. The Parties are independent contractors. This Agreement does not create a partnership, franchise,



joint venture, agency, and fiduciary or employment relationship between the Parties. Except for payment obligations, neither HiBob nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance). Except to the extent required by applicable law, there are no third-party beneficiaries under this Agreement.